

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARTHA L. IRWIN,

v.
Plaintiff,
INTERNAL REVENUE SERVICE,
Defendant.

Case Number 07-13023
Honorable David M. Lawson
Magistrate Judge Steven D. Pepe

**ORDER ADOPTING REPORT AND RECOMMENDATION, REJECTING
OBJECTIONS, AND DISMISSING CASE**

Presently before the Court is the report issued on April 22, 2008, by Magistrate Judge Steven D. Pepe pursuant to 28 U.S.C. § 636(b) recommending that this Court dismiss the plaintiff's complaint without prejudice for failure to serve the defendant within the period set by the Federal Rules of Civil Procedure. The plaintiff filed objections on May 1, 2008, stating, "Pursuant to Fed. R. Civ. P. 4(m), Plaintiff hereby requests thirty (30) additional days to serve her complaint. Service to U.S. agencies is difficult in propria persona and will now serve the IRS correctly."

Objections to a report and recommendation are reviewed *de novo*. "A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The parties' failure to file objections to the Report and Recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

“Establishing good cause is the responsibility of the party opposing [dismissal] . . . and ‘necessitates a demonstration of why service was not made within the time constraints.’” *Nafziger v. McDermott Int’l, Inc.*, 467 F.3d 514, 521 (6th Cir. 2006) (quoting *Habib v. Gen. Motors Corp.*, 15 F.3d 72, 73 (6th Cir. 1994)). Ignorance of the rules is generally not considered good cause. *Nwokocha v. Perry*, 67 F. App’x 912, 914 (6th Cir. Jun. 20, 2003) (affirming the dismissal of a suit against the government when the *pro se* plaintiff failed to properly serve summons on the defendant); *Scarton v. Charles*, 115 F.R.D. 567, 569 (E.D. Mich. 1987) (“Mere ignorance of the rules, or failure to keep track of dates is not good cause for failure to serve a party on time.”); 4B Fed. Prac. & Proc. Civ.3d § 1137.

In this case, the plaintiff was given two chances to show good cause for her delay in service: once in response to the magistrate judge’s order to show cause and once in her objections. She states that it is “difficult” to serve the United States, but does not explain why she is having difficulty complying with Rule 4(i), which spells out how service is completed against the United States and its agencies. Two hundred and eighty-six days – more than double that called for by the rule – elapsed from the filing of the complaint to the date the plaintiff filed her objections to the magistrate judge’s report and recommendation. Because the plaintiff has failed to establish good cause for this delay, and the Court agrees with the magistrate judge’s report and recommendation that the case be dismissed without prejudice. Should the plaintiff believe she has a meritorious case, she may commence a new action by refiling her case.

Accordingly, it is **ORDERED** that the Magistrate Judge’s Report and Recommendation [dkt # 6] is **ADOPTED**, and the plaintiff’s objections [#7] are **OVERRULED**.

It is further **ORDERED** that the plaintiff's motion to amend her complaint [#7] is **DENIED**
as moot.

It is further **ORDERED** that the complaint is **DISMISSED without prejudice.**

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: May 15, 2008

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on May 15, 2008.

s/Felicia M. Moses
FELICIA M. MOSES